IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO. 6433 OF 2006

Sou Sulochana Hirasa Zad.... Petitioner

versus

Choundeshwari Sahakari Bank Ltd.& a..... Respondent.

Shri S.V.Sadavarte for the petitioner.
Shri P.M.Arjunwadkar for the respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 05TH SEPTEMBER, 2007

P.C.;

1. This petition is directed against the order passed by Divisional Joint Registrar, Co-operative Societies dated 19-7-2006. In the revision application filed before the Dvl. joint Registrar, the present petitioner has prayed for setting aside the auction conducted by the Special Recovery Officer of the bank on 9-10-2006 of the immovable property of the petitioner. The respondent bank has proceeded to recover the amount under a certificate possessed by it under section 101 of the Co-operative Societies Act against the preset petitioner. The recovery certificate issued against the petitioner has not been challenged till date. By making various applications, an attempt has been made to raise objections to the steps taken in execution of the said certificate. Before the property was put to auction, the petitioner

had pleaded that the petitioner is entitled to have one time settlement under the scheme framed by the Reserve Bank. The order passed by the Dvl.Joint Registrar dated 19-7-2006 in Misc. Application No.21/03 reveals that the bank was agreeable for one time settlement provided the petitioner was ready and willing to pay Rs. 3,41,168/-after deducting the amount deposited by the petitioner after 31-7-2003. As the petitioner was disputing the calculation made by the bank, a Chartered Accountant was appointed by consent of both the parties and he had submitted a report. But thereafter the petitioner did not pay the amount and thus the one time settlement could not materialise. It is observed by the Dvl.Joint Registrar that the petitioner has failed to act in accordance with the terms of one time settlement and it is also found that the petitioner was not interested in settlement of the account under one time settlement scheme.

2. During pendency of this petition, the advocate for respondent nos. 1 and 2 informed this court on 19-6-2007 that not only the property has been sold in auction but even a sale certificate has been issued by the Deputy Registrar of the Co-operative Societies in favour of the purchaser. The property has been sold to the highest bidder for a sum of Rs.5,50,000/- and

the amount has been received by the bank from the purchaser. The sale certificate was produced for perusal of this court. The same sale certificate records that the sale has been confirmed and made absolute on 6-1-2007. The learned counsel for the petitioner submits that he is ready and willing to pay the dues of the bank, and the property should not be allowed to be sold. Having regard to the facts narrated hereinabove, it is obvious that the present petition is rendered infructuous. Even otherwise the sale certificate has been issued in favour of the purchaser and in the absence of the purchaser being a party to the petition, no relief is capable of being granted to the present petitioner. Hence the writ petition deserves to be summarily dismissed.

3. The learned counsel for the petitioner submits that the petiitoner is still in possession of the property and he proposes to file a revision under section 154 of the Co-operative Societies Act, after complying with the provisions of sub section (2A) thereof and till then the possession be protected. The learned counsel for the respondent bank does not dispute the fact that the petitioner is still in possession of the property. In this view of the matter though I dismiss the writ petition, the interim order passed by this court dated 29-6-2007 shall

continue for a further period of two weeks.

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